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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Open Network Architecture Tariffs)
of Bell Operating Companies)

CC Docket No. 92-91

TO: The Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules and Regulations, 47 C.F.R. § 1.106, MCI Telecommunications Corporation (MCI) hereby moves for reconsideration of the Commission's ONA Investigation Final Order in the above-captioned proceeding.¹ As explained below, that order constitutes an unprecedented foray into secret ratemaking, in which MCI and other intervenors were denied any meaningful participation, in violation of the Communications Act of 1934, the Administrative Procedure Act (APA) and constitutional due process requirements.

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¹/ FCC 93-532 (released Dec. 15, 1993).

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Introduction

MCI has discussed, in its Opposition to Direct Cases filed in this docket on October 16, 1992 and other pleadings, a few of the more clear-cut methodological problems in the Open Network Architecture (ONA) tariffs filed by the Bell Operating Companies (BOCs), including problems related to the computerized "SCIS" and "SCM" cost models used to calculate costs in setting those rates. MCI has also explained, at pages 27-35 of its Opposition, why both versions of the SCIS/SCM cost model that were ultimately disclosed to intervenors (referred to as "Redactions I and II") were totally useless, even as to the one switch type for which each intervenor was provided data. MCI has also discussed, in its Application for Review of the SCIS Disclosure Order² and other pleadings, the unjustifiable restrictions placed on intervenors' access to and use of those redacted cost models and other necessary materials, which further precluded meaningful participation in this investigation.

In its ONA Investigation Final Order, the Commission addresses issues raised by MCI and other intervenors in their Oppositions. Although the Commission's response to those issues is unreasonable and inadequate, MCI generally will not repeat in this forum the points raised in its Opposition. The focus of this Petition is not on the issues MCI did raise, but rather the

²/ Commission Requirements for Cost Support Material To Be Filed With Open Network Architecture Access Tariffs, 7 FCC Rcd. 1526 (Com. Car. Bur. 1992), aff'd, FCC 93-531 (released Dec. 15, 1993) (SCIS Disclosure Reconsideration Order).

issues it and the other intervenors were prevented from raising by the inadequate disclosure resulting from Redactions I and II, and the effect of such a handicap on the reasonableness and validity of the ONA Investigation Final Order. Redactions I and II were so useless that MCI and the other intervenors were completely precluded from any meaningful participation in the investigation in this docket. In the ONA Investigation Final Order and SCIS Disclosure Reconsideration Order, the Commission attempts to justify the inadequate disclosure provided to MCI and the other intervenors on grounds so at odds with the record and irrational, and so grossly mischaracterizes the extent of their participation in this investigation, that the public interest requires that MCI lend whatever additional assistance may be necessary to clear up the Commission's evident confusion.³

The Disclosure Afforded by Redactions I and II Was so Inadequate as to Preclude Meaningful Participation in This Investigation

According to the Commission, the SCIS Disclosure Order "required Bellcore and US West, in cooperation with switch vendors, to develop redacted SCIS and SCM models, which would allow intervenors to observe the models in operation, and determine their sensitivity to changes in various input data

³/ Given the nature of the Commission's muddled approach to the issues, it is inevitable that MCI will have to repeat points it has made previously or at least will have to raise matters that ought to have been obvious corollaries of its prior points. Because of the Commission's approach, some overlap between MCI's two petitions for reconsideration of these interrelated orders is also inevitable.

values...."⁴ In the ONA Investigation Final Order, the Commission appears to believe that is what actually happened. In paragraph 80, the Commission concludes that:

the redactions did not prevent interested parties from making a meaningful review of SCIS for purposes of evaluating the ONA tariffs. The intervenors were able to conduct sensitivity analyses, i.e., to examine how changes in SCIS inputs affect SCIS outputs, on most of the relevant SCIS inputs. These sensitivity analyses...enabled the intervenors to raise specific questions regarding the reasonableness of the cost and rate development.... We conclude that the restrictions placed by Bellcore and US West on the examination of Redaction II permitted intervenors an adequate opportunity for review.

The problem with all of the quoted statements is that they are entirely incorrect. MCI made it quite clear in its Opposition to Direct Cases that Redaction II, like Redaction I, was so inadequate that any sensitivity analyses were "impossible,"⁵ preventing meaningful participation in the tariff investigation.⁶ There were no credible statements in the record contradicting MCI's observations as to Redaction I or II. There was therefore no credible support for the Commission's

⁴/ ONA Investigation Final Order at ¶9.

⁵/ MCI Opposition at 32.

⁶/ Id. at 33. As MCI pointed out in its Opposition, at 28-29, the problem here is not the internal validity of the SCIS/SCM model, but rather the inherent flexibility afforded to the analyst in the selection of inputs, thus allowing the BOCs to justify almost any calculation of costs and thus any rates. The ONA Investigation Final Order at ¶¶82-83 alludes to this distinction but fails to address the main issue presented by MCI. Because intervenors were not able to perform sensitivity analyses, they were unable to identify the full range of flexibility in the selection of inputs, and thus were unable to identify the range of issues that must be examined to assure reasonable rates.

enthusiasm for Redaction II or the conclusions quoted above as to the intervenors' participation in the tariff investigation, particularly the claim that "intervenors were able to conduct sensitivity analyses...."

The Commission's conclusion suggests that it might have been thrown off by the intervenors' ability "to raise specific questions regarding the reasonableness of the cost and rate development."⁷ Contrary to the Commission's inference, the intervenors' "questions" were not the fruit of sensitivity analyses using Redaction I or II, since no such analyses were possible. Most of the questions raised were simply "well-documented suspicions regarding the potential for misuse of the costing process by the BOCs," as MCI put it.⁸ Redaction II, like Redaction I, prohibited any follow-up on those suspicions.⁹ Thus, the intervenors were unable to raise any issues based on the sensitivity analyses that the Commission concedes are the prerequisite to any meaningful review of the ONA tariffs.¹⁰

The Commission might also have assumed that each intervenor was able to review the SCIS/SCM cost model as to one switch type and that the Commission therefore had the benefit of all of the intervenors' analyses of all of the different switch types. The SCIS Disclosure Reconsideration Order, at paragraphs

⁷/ ONA Investigation Final Order at ¶80.

⁸/ MCI Opposition to Direct Cases at 33.

⁹/ Id.

¹⁰/ See SCIS Disclosure Reconsideration Order at ¶10.

11 and 12, focuses on MCI's criticism that intervenors were not allowed to "compare notes." Since the Commission wrongly concludes that "the intervenors were able to examine the effects of SCIS inputs on SCIS outputs for all the relevant SCIS inputs except negotiated price discounts,"¹¹ the Commission may have wrongly assumed that each intervenor had access to a useful cost model for one switch type and that all of the intervenors' analyses taken together therefore provided the Commission with a complete picture. Nothing could be further from the truth. Since no sensitivity analyses were possible, even for the one switch type that each intervenor was permitted to review, the totality of all of the intervenors' pleadings, taken together, could not have provided, and did not provide, the Commission with any insights that sensitivity analyses might have yielded.

Since MCI and the other intervenors were prevented from participating effectively in this proceeding on account of the inadequate disclosure authorized by the SCIS Disclosure Order and SCIS Disclosure Reconsideration Order, the ONA Investigation Final Order constitutes unprecedented secret ratemaking. Even if the Commission had adequately addressed, in the ONA Investigation Final Order, all of the issues raised by intervenors, which is not the case, the Commission has absolutely no basis for assuming that those were the only issues that needed to be addressed to assure reasonable rates. As explained above and in MCI's Opposition, the intervenors' inability to perform necessary

¹¹/ Id. at ¶14. See also, ONA Investigation Final Order at ¶80.

sensitivity analyses prevented them from raising issues that such analyses would have suggested. As the Commission concedes, such analyses are "a prime purpose of independent review."¹²

There is therefore no basis for the Commission's conclusion that the ONA ratemaking "methods employed by BOCs are generally sound apart from these specific deficiencies [ordered to be corrected]"¹³ and that once revised ONA tariffs are filed as required by the ONA Investigation Final Order, this investigation may be terminated.¹⁴ The secret and largely unreviewed ratemaking approved in the ONA Investigation Final Order therefore violates Sections 201-05 of the Communications Act of 1934, as well as the APA and constitutional due process requirements.¹⁵

¹²/ SCIS Disclosure Reconsideration Order at ¶10.

¹³/ ONA Investigation Final Order at ¶3.

¹⁴/ Id. at ¶95.

¹⁵/ See, e.g., American Television Relay, Inc., 63 F.C.C. 2d 911, 921 (1977) (FCC consideration of evidence that other parties have no opportunity to review violates "their right of due process").


Conclusion

Accordingly, the ONA Investigation Final Order should be reconsidered, in order that the investigation be conducted in a manner that permits meaningful participation by intervenors, thereby permitting a review of all of the issues necessary to assure reasonable ONA rates.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:




Larry A. Blosser
Frank W. Krogh
Donald J. Elardo
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2727

Its Attorneys

Dated: January 14, 1994

CERTIFICATE OF SERVICE

I, James Price, hereby certify that copies of the foregoing "PETITION FOR RECONSIDERATION" in CC Docket 92-91 were mailed first-class, postage prepaid, to the following on this 14th day of January 1994.



James Price

Kathleen Levitz*
Chief, Common Carrier
Bureau
Federal Communications
Commission
1919 M Street N.W.
Washington, D.C. 20554

Gregory Vogt, Esq.*
Chief, Tariff Division
Common Carrier Bureau
Federal Communications
Commission
1919 M Street N.W.
Washington, D.C. 20554

Stan Wiggins, Esq.*
Senior Attorney
Tariff Division
Common Carrier Bureau
Federal Communications
Commission
1919 M Street N.W.
Washington, D.C. 20554

James F. Britt
Executive Director
Bell Communications Research
LCC 2E-243
290 West Mt. Pleasant Avenue
Livingston, NJ 07039

U S WEST Communications, Inc.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

James S. Blaszak
Charles C. Hunter
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 - East Tower
Washington, DC 20005

J. Scott Nicholls
Roy L. Morris
Allnet Communications Services,
Inc.
1990 M Street, N.W.
Suite 500
Washington, DC 20036

Richard E. Wiley
Michael Yourshaw
William B. Baker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006
Counsel for American
Newspaper Publishers Association

Francine J. Berry
David P. Condit
Peter H. Jacoby
Edward A. Ryan
American Telephone & Telegraph Co.
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

Daryl L. Avery
Peter Wolfe
Public Service Commission
of the District of Columbia
450 Fifth Street, N.W.
Washington, DC 20001

Michael J. Ettner
General Services Administration
Personal Property Division
18th & F Streets, N.W.
Room 4002
Washington, D.C. 20405

Leon M. Kestenbaum
US Sprint Communications
Company Limited Partnership
1850 M Street, N.W.
Suite 1110
Washington, DC 20036

Peter A. Rohrbach
Karis A. Hastings
Hogan & Hartson
555 13th Street, N.W.
Washington, D.C. 20004

Randall B. Lowe
John E. Hoover
Michael R. Carper
Jones, Day, Reavis & Pogue
1450 G Street, N.W.
Washington, DC 20005
Counsel for Metromedia
Communications Corporation

Paul DeJongh
Northern Telecom, Inc.
P.O. Box 13010
Research Triangle
Park, NC 27709-3010

L. Michelle Boeckman
730 International Parkway
Richardson, TX 75081
Counsel for Ericsson Network
Systems

Albert Halprin
Stephen L. Goodman
Halprin, & Goodman
1301 K Street N.W.
Suite 1020 East
Washington, D.C. 20005

Jo Ann Goodard Riley
Director
Pacific Telesis
Federal Regulatory Relations
1275 Pennsylvania Avenue, N. W.
Suite 400
Washington, D.C. 20004

International Transcription
Service*
1919 M Street, N.W., Rm 246
Washington, D.C. 20554

Floyd S. Keene
Attorney for Ameritech
2000 West Ameritech Center Dr.
Rm. 4H64
Hoffman Estates, IL 60196-1025

Bell Atlantic
1710 H Street, N.W.
Washington, D.C. 20006

William B. Barfield
Attorney for BellSouth
1155 Peachtree St., N.E., Rm. 1800
Atlanta, GA 30367

Mary McDermott
Attorney for NYNEX
120 Bloomingdale Road
White Plains, NY 10605

William C. Sullivan
Attorney for Southwestern Bell
1010 Pine St., Rm. 2305
St. Louis, MO 63101